

## Senate Bill 115

By: Senators Shafer of the 48th, Johnson of the 1st, Williams of the 19th, Rogers of the 21st, Pearson of the 51st and others

**AS PASSED**

**AN ACT**

To amend Chapter 41 of Title 43 of the Official Code of Georgia Annotated, relating to residential and general contractors, so as to revise the licensure provisions for residential and general contractors; to revise certain definitions; to provide that the State Licensing Board for Residential and General Contractors may provide interpretation and guidance on the policies and procedures of the board; to provide for inactive licenses; to provide for categories of licenses; to allow the board to contract for the development and administration of examinations; to revise the manner of renewing licenses; to revise certain dates; to provide for penalties for intentionally attempting to evade licensing requirements; to provide for exceptions to licensing requirements; to provide for a period to file applications for exemption; to provide for the posting of certain licensing requirements and the effective dates of such requirements; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

**SECTION 1.**

Chapter 41 of Title 43 of the Official Code of Georgia Annotated, relating to residential and general contractors, is amended by revising paragraphs (4), (5), and (7) of Code Section 43-41-2, relating to definitions, as follows:

"(4) 'Contractor,' except as specifically exempted by this chapter, means a person who is qualified, or required to be qualified, under this chapter and who, for compensation, contracts to, offers to undertake or undertakes to, submits a bid or a proposal to, or personally or by others performs the construction or the management of the construction for an owner of any building, bridge, or other structure, including a person who installs industrialized buildings as defined in paragraphs (3) and (4) of Code Section 8-2-111, for the construction or improvement of, addition to, or the repair, alteration, or remodeling of any such building, bridge, or structure for use by the owner or by others or for resale to others. The term 'contractor' for purposes of this chapter shall include a person who

contracts to, undertakes to, or submits a bid or proposal to perform, or otherwise does himself or herself perform, for an owner:

(A) Construction management services relative to the performance by others of such construction activities where the person performing such construction management services is at risk contractually to the owner for the performance and cost of the construction; and

(B) Services of a contractor as part of performance of design-build services, whether as a prime contractor, joint venture partner, or as a subcontractor to a design professional acting as prime contractor as part of a design-build entity or combination. Both residential and general contractors, in addition to contractors licensed under Chapter 14 of this title to perform such work or any component thereof, shall be permitted to construct storm-water management systems comprising any storm-water conveyance or storm-water detention facility that moves storm or surface water from a specific point on a wholly contained construction project site to another specific point on the same project site and which are wholly contained within the project site and are not part of or connected to any public or private water treatment system, waste-water treatment system, or storm-water system.

(5) 'General contractor' means a contractor whose services are unlimited as to the type of work which he or she may do, subject to the financial limitations as may be imposed by a subclassification created pursuant to paragraph (8) of subsection (b) of Code Section 43-41-5, and who may contract for, undertake to perform, submit a bid or a proposal or otherwise offer to perform, and perform any activity or work as a contractor requiring licensure under this chapter including within its scope any work requiring licensure under Chapter 14 of this title; provided, however, that any work contractually undertaken by a general contractor in the nature of electrical contracting, plumbing, conditioned air contracting, low voltage contracting, or utility contracting which falls within the licensing requirements of Chapter 14 of this title may not be performed by the general contractor but shall only be performed by a person who is duly licensed to perform such work under Chapter 14 of this title. The construction of all private, commercial, institutional, industrial, public, and other buildings and structures under contract with or engagement directly by an owner shall be undertaken by a general contractor, except as otherwise expressly set forth in or excluded from operation of this chapter."

"(7) 'Qualifying agent' means a person who possesses the requisite skill, knowledge, and experience and has the responsibility to supervise, direct, manage, and control all of the contracting activities within the State of Georgia of a contractor doing business in the

form of a business organization, with which he or she is affiliated by employment or ownership; who has the responsibility to supervise, direct, manage, and control construction activities on any project for which he or she has obtained the building permit pursuant to Code Section 43-41-14; and whose technical and personal qualifications have been determined by investigation and examination as provided in this chapter, except as exempted under Code Section 43-41-8, as attested by the division."

## SECTION 2.

Said chapter is further amended by revising subsections (b) and (c) of Code Section 43-41-3, relating to the creation of State Licensing Board for Residential and General Contractors, as follows:

"(b) The residential contractor division shall consist of seven members and, except as otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the practice of the two subcategories of residential contracting, residential-basic contractors and residential-light commercial contractors. Five members shall be residential contractors eligible for licensure under this chapter. Effective July 1, 2008, all residential contractor members shall be required to be licensed under this chapter. At least two of the residential contractor members shall be qualified to perform residential-light commercial type projects; three shall be qualified and shall predominantly perform residential-basic type projects; one shall be a residential contractor whose business predominately involves remodeling projects; one shall be a residential contractor who constructs at least an average of 20 residences per year; and all must be geographically diverse. One member shall be a public building official and one member shall be a public member. The public member shall have no ties with the residential construction industry and shall represent the interests of the public at large. The initial member terms on the residential contractor division shall be staggered so that all terms do not expire simultaneously. Three members shall serve initial terms of five years, three members shall serve initial terms of four years, and one member shall serve an initial term of three years. The residential contractor division shall meet at least six times each year for the purpose of transacting such business as may properly come before it.

(c) The general contractor division shall consist of seven members and, except as otherwise expressly stated in this chapter, shall have jurisdiction of and authority over the practice of general contracting. Five members shall be general contractors eligible for licensure under this chapter. Effective July 1, 2008, all general contractor members shall

be required to be licensed under this chapter. At least two of the general contractor members shall be small-volume builders with an annual contracting volume of less than \$5 million and all of whom must be geographically diverse. One member shall be a currently licensed or registered architect or engineer and one member shall be a public building official. The initial member terms on the general contractor division shall be staggered so that all terms do not expire simultaneously. Three members, including at least two contractor members, shall serve initial terms of five years; three members, including at least two contractor members, shall serve initial terms of four years; and one member shall serve an initial term of three years. The general contractor division shall meet at least six times each year for the purpose of transacting such business as may properly come before it."

### SECTION 3.

Said chapter is further amended by revising subsections (b) and (f) of Code Section 43-41-5, relating to board meetings and the power of the board and its divisions, as follows:

"(b) The board and its divisions shall have the power to:

- (1) Request from the various departments, agencies, and authorities of the state and its political subdivisions and their agencies and authorities such available information as they may require in their work; and all such departments, agencies, and authorities shall furnish such requested available information to the board and its divisions within a reasonable time;
- (2) Provide by regulation for reciprocity with other states or territories of the United States in the licensing of residential and general contractors, provided that such other states have requirements substantially equal to the requirements in force in this state for registration, licensure, or certification and that any such contractor holding a current and valid license, certificate, or registration from another state or territory seeking licensure by way of reciprocity shall demonstrate that such applicant meets, in the discretion of the respective division, the qualifications, requirements, and criteria set forth in Code Section 43-41-6, other than the requirement to take and pass an examination as set forth in subsection (d) of Code Section 43-41-6, and that such applicant is otherwise in compliance with all requirements of the State of Georgia for transaction of such business within this state; provided, further, that a similar privilege is offered to residents of this state by the other state or territory;
- (3) Establish and adjust fees as necessary within the limits set forth in Chapter 1 of this title;

- (4) Adopt official seals for their use and change them at pleasure;
- (5) Establish the policies and procedures for regulating the businesses of residential contracting and general contracting and provide interpretation and guidance regarding the implementation and application of such policies and procedures;
- (6) Determine qualifications for licensure or certification, including such experience requirements as the board deems necessary;
- (7) Promulgate and adopt rules and regulations necessary to carry out this chapter;
- (8) Establish and define appropriate categories of general contractor licensure based upon financial criteria; and
- (9) Allow for inactive status pursuant to Code Section 43-1-22."

"(f) The denial of a license on grounds other than those enumerated in this chapter, the issuance of a private reprimand, the denial of a license by reciprocity, the denial of a request for reinstatement of a revoked license, or the refusal to issue a previously denied license shall not be considered to be a contested case within the meaning of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Notice and hearing within the meaning of Chapter 13 of Title 50 shall not be required, but the applicant or licensee shall be allowed to appear before the appropriate division if he or she so requests."

#### **SECTION 4.**

Said chapter is further amended by revising subsections (a), (f), (i), and (j) of Code Section 43-41-6, relating to eligibility for licensure as residential-basic contractor, residential-light commercial contractor, and general contractor, as follows:

"(a) Anyone seeking to be licensed as a residential contractor or as a general contractor in this state shall file an application on a form provided by the residential contractor or general contractor division, respectively, accompanied by an application fee as provided by the board. Such an application may be submitted either by:

- (1) An individual person seeking issuance of a license in his or her own name for purposes of engaging in the profession of residential or general contracting in his or her own name or doing business as an individual in a trade name as a sole proprietorship; or
- (2) An individual person affiliated by ownership or employment with and acting as a qualifying agent for a business organization seeking to engage in the profession of residential or general contracting in the name of the business organization in accordance with and pursuant to Code Section 43-41-9.

Additionally, all applicants must submit to and successfully pass an examination prepared by, prepared for, or approved by the appropriate division, except where an applicant is

otherwise qualified for licensure and has satisfied the appropriate division requirements and regulations for licensure pursuant to Code Section 43-41-8 exempting such applicant from the examination requirement or where the applicant is an individual acting as a qualifying agent for a business organization and has previously obtained and maintained continuously a license issued by the appropriate division, either as an individual doing business in his or her own name or doing business as an individual in a trade name as a sole proprietor or as a qualifying agent for another business organization."

"(f)(1) The residential contractor division and the general contractor division shall each conduct or cause to be conducted an examination of all qualified applicants, except those exempted from the examination requirement pursuant to Code Section 43-41-8.

(2) The residential contractor division shall conduct or cause to be conducted separate examinations for applicants for residential-basic and residential-light commercial licenses for the purpose of determining a particular applicant's ability to make a practical application of his or her knowledge of the profession of residential contracting in the particular subcategory for which a license is sought; the applicant's qualifications in reading plans and specifications; his or her knowledge of building codes, estimating costs, construction, ethics, contracting, and other similar matters pertaining to such residential contracting business; his or her knowledge as to the responsibilities of a residential contractor to the public and to owners, subcontractors, and suppliers; and his or her knowledge of the requirements of the laws of this state relating to residential-basic and residential light-commercial contractors, construction, workers' compensation, insurance, and liens.

(3) The general contractor division shall conduct or cause to be conducted an examination to ascertain the particular applicant's ability to make a practical application of his or her knowledge of the profession of commercial general contracting; the applicant's qualifications in reading plans and specifications; his or her knowledge of building codes, estimating costs, construction, ethics, contracting, and other similar matters pertaining to the general contracting business; his or her knowledge as to the responsibilities of a general contractor to the public and to owners, subcontractors, and suppliers; and his or her knowledge of the requirements of the laws of this state relating to general contractors, construction, workers' compensation, insurance, surety bonding, and liens.

(4) If the results of the applicant's examination are satisfactory to the appropriate division, or he or she is exempted from the examination requirement under Code Section 43-41-8, and if he or she and any affiliated business organization has met the other

qualifications and requirements set forth in this Code section, then the appropriate division shall issue to the applicant a license to engage in business as a residential or general contractor in this state, as provided in such license, in his or her own name as a sole proprietor or as a qualifying agent for the affiliated business organization and in the name of such business organization, pursuant to and in accordance with the requirements set forth in Code Section 43-41-9. A residential contracting license shall indicate for which of the two subcategories, residential-basic or residential-light commercial, the licensee is qualified."

"(i) Such licenses shall be renewable biennially. Licenses may be renewed subsequent to their expiration within six months of the date of expiration by submitting a renewal as prescribed by the board and paying a late renewal fee as determined by the board. After six months has elapsed from the date of expiration, such license may be reinstated in accordance with the rules and regulations of the board.

(j) The division director shall give advance notice to each person holding a license under this chapter of the date of the expiration of the certificate of registration and the amount of the fee required for renewal at least one month prior to the expiration date, but the failure to receive such notice shall not avoid the expiration of any license not renewed in accordance with this Code section."

## **SECTION 5.**

Said chapter is further amended by revising Code Section 43-41-8, relating to eligibility for licensure without examination, as follows:

"43-41-8.

(a) Notwithstanding any other provision of this chapter to the contrary, the following persons desiring to qualify for a residential contractor license or a general contractor license under the provisions of this chapter, either individually or as a qualifying agent, shall be eligible for issuance of such a license by the appropriate division without examination, provided that such person submits a proper application and proofs, pays or has paid the required fees, otherwise meets the requirements of Code Section 43-41-6 for licensure, and is not otherwise in violation of this chapter:

(1) Any person who holds a current and valid license to engage in the comparable category of residential or general contracting issued to him or her by any governing authority of any political subdivision of this state which requires passing an examination which is substantially similar to the state examination for residential or general contractors, provided that such person is a Georgia resident and citizen, if an individual

applying in his or her own behalf, or is seeking licensure as a qualifying agent for a business organization incorporated in Georgia or otherwise authorized and certified to transact business in Georgia with a regular office and place of business in Georgia currently and having had such office and place of business continuously for the five years immediately preceding such application; provided, further, that the examination results are made available to the appropriate division. Such application and request for exemption must be submitted within the time limits set forth in subsection (a) of Code Section 43-41-17;

(2) Any person who has successfully and efficiently engaged in the comparable category of residential or general contracting in this state as provided in this Code section; provided, however, that such person shall be either a resident and citizen of the state of Georgia or, if applying as a qualifying agent for a business organization, such business organization shall be either incorporated in Georgia or is a business organization otherwise authorized and certified to transact business in Georgia with a regular office and place of business in Georgia currently and having had such office and place of business continuously for the five years immediately preceding such application; provided, further, that such application and request for exemption is submitted within the time limits set forth in subsection (a) of Code Section 43-41-17. To prove that he or she has successfully engaged in residential-basic or residential-light commercial projects, the person shall be required to give evidence of three successful projects located in Georgia which were successfully completed over the period of five years immediately prior to the time of application; evidence of ten successfully completed residential-basic or residential-light commercial projects located in Georgia over the period of ten years immediately prior to the time of application; or evidence that he or she has participated in or been engaged in residential-basic or residential-light commercial construction in a supervisory or management capacity for seven of the ten years immediately prior to the time of application. To prove that he or she has successfully engaged in commercial general contracting, the person submitting the application shall be required to give evidence of five successful general contracting projects located in Georgia which were successfully completed over the period of five years immediately prior to the time of application or evidence of ten successful general contracting projects located in Georgia which were successfully completed over the period of ten years immediately prior to the time of application, such projects having been performed either by such person acting as an individual or by a business organization in which such individual person was affiliated



by employment or ownership and over which such person had general oversight and management responsibilities;

(3) Any person who holds a current and valid license to practice a comparable category of residential or general contracting issued by another state or territory of the United States, where either such state or territory has entered into a reciprocal agreement with the board and divisions for the recognition of contractor licenses issued in that state or territory, or such application is pursuant to and in accordance with the regulations and requirements for reciprocity promulgated by the divisions in accordance with subsection (b) of Code Section 43-41-5. Additionally, such application shall meet the following requirements:

(A) The criteria for issuance of such license or certification by such other state or territory, including the requirement to successfully complete an examination, were substantially equivalent to Georgia's current license criteria;

(B) The application requirements and application form submitted to the other state or territory upon which such license was issued are available for review by the appropriate division and the examination results are made available to the appropriate division;

(C) The applicant shall demonstrate that he or she meets the qualifications, requirements, and criteria set forth in subsections (a), (b), (c), and (d) of Code Section 43-41-6; and

(D) The applicant is otherwise in compliance with all requirements of this state for transaction of such business within this state; provided, however, that such application and request for exemption shall be submitted in accordance with subsection (a) of Code Section 43-41-17; and

(4) Any person who holds a current and valid license issued under this chapter to engage in the comparable category of residential or general contracting which license was issued to him or her in their capacity either as an individual licensee or as a qualifying agent for a business organization.

(b) Any applicant for issuance of a residential contractor or general contractor license under this title who shall seek exemption from the examination requirement under this Code section, on any basis set forth above, shall have the burden of establishing to the satisfaction and within the discretion of the appropriate division that the requirements for such exemption have been satisfied. The decision of such division as to the satisfaction of the requirements for such exemption from taking the examination shall, in the absence of fraud, be conclusive."

**SECTION 6.**

Said chapter is further amended by revising Code Section 43-41-9, relating to licensing of individuals and organizations, as follows:

"43-41-9.

(a) If an individual applicant proposes to engage in residential or general contracting in the individual's own name or a trade name where the individual is doing business as a sole proprietorship, the license shall be issued only to that individual. Where an applicant under this chapter is seeking issuance of a residential or general contractor license on behalf and for the benefit of a business organization seeking to engage in residential or general contracting as a business organization, the application for a license under this chapter must be submitted by and through an individual qualifying agent for such business organization or entity and expressly on behalf of such business organization or entity. In such case, the license shall be issued to the individual qualifying agent and to the affiliated business organization or entity on whose behalf the application was made. It shall be unlawful for any person, firm, corporation, or association to operate a business organization or entity engaged in the business of residential or general contracting without first obtaining a license from the appropriate division after the effective date of the licensing requirements as specified in subsection (a) of Code Section 43-41-17. The appropriate division shall not issue a license to any business organization or entity to engage in residential or general contracting unless such business organization or entity employs at least one currently licensed individual residential or general contractor serving as its qualifying agent who is actually engaged by ownership or employment in the practice of residential or general contracting for such business organization or entity and provides adequate supervision and is responsible for the projects of such business organization or entity. A business organization may allow more than one person to act as a qualifying agent for such organization, subject to each such individual qualifying agent having successfully satisfied the requirements for issuance of a license under this chapter and having obtained issuance of such a license by the appropriate division. Each such business organization shall have at least one qualifying agent in order to be considered authorized to engage in such contracting business.

(b) The application for a license by a qualifying agent must include an affidavit on a form provided by the board attesting that the individual applicant has final approval authority for all construction work performed by the business organization or entity within the State of Georgia and that the individual applicant has final approval authority on all business

matters, including contracts and contract performance and financial affairs of the business organization or entity.

(c) A joint venture is considered a separate and distinct organization for licensing purposes under this chapter and must be qualified and licensed in accordance with the appropriate division's rules and regulations either:

- (1) In its own name as a separate business organization; or
- (2) By each of the members of the joint venture doing business as a residential contractor or general contractor holding, as an individual or as a business organization acting through its qualifying agent, a valid and current residential or general contractor's license issued by the appropriate division.

Each such licensed individual or qualifying agent shall be considered a qualifying agent of such joint venture.

(d) If, during the period encompassed by a license issued to a qualifying agent acting for and on behalf of an affiliated business organization, there is a change in any information that is required to be stated on the application, the business organization shall, within 45 days after such change occurs, furnish the correct information to the appropriate division.

(e)(1) At least one qualifying agent shall be licensed under this chapter in order for the business organization to obtain a license as a residential or general contractor. If any qualifying agent ceases to be affiliated with such business organization, for any reason, he or she shall so inform the division having jurisdiction. In addition, if such qualifying agent is the only qualifying agent licensed hereunder affiliated with the business organization, the business organization shall promptly notify the appropriate division of the termination of the relationship with that qualifying agent and shall have 120 days from the termination of the qualifying agent's affiliation with the business organization to employ another qualifying agent and submit an application for licensure under the new qualifying agent. The submission of such application shall serve to maintain the licensed status of the business organization pending and subject to approval of such application by the appropriate division; provided that, should such application be denied by that division, then, after passage of the 120 day period, the business organization shall cease to be considered licensed as a residential or a general contractor unless and until a new application is submitted and approved by the appropriate division. In such circumstance, the affected business organization may not thereafter engage in residential or general contracting until a new qualifying agent is employed, unless the appropriate division has granted a temporary nonrenewable license to the financially responsible officer, the president or chief executive officer, a partner, or, in the case of a limited partnership, the

general partner, who thereafter shall assume all responsibilities of a qualifying agent for the business organization or entity. This temporary license shall only allow the entity to proceed with incomplete contracts already in progress. For the purposes of this paragraph, an incomplete contract is one which has been awarded to, or entered into by, the business organization prior to the cessation of affiliation of the qualifying agent with the business organization or one on which the business organization was the low bidder and the contract is subsequently awarded, regardless of whether any actual work has commenced under the contract prior to the qualifying agent ceasing to be affiliated with the business organization.

(2) A person licensed under this chapter either as an individual doing business in his or her name or doing business in a trade name as a sole proprietor may serve as a qualifying agent for a business organization upon application and demonstration of satisfaction by such business organization of all financial and insurance requirements pursuant to Code Section 43-41-6. A qualifying agent may serve in such capacity for more than one business organization, provided that he or she shall satisfy the criteria for serving in such capacity with regard to each such business organization. A qualifying agent shall inform the division having jurisdiction in writing when he or she proposes to engage in contracting in his or her own name or in affiliation as a qualifying agent with another business organization, and he or she or such new business organization shall supply the same information to the division as required of applicants under this chapter. Such person shall be deemed to be a licensed residential or general contractor for the original term of his or her license for the purpose of engaging in contracting as an individual in his or her own name, provided that he or she qualified for such license based on his or her own personal qualifications as to financial responsibility and insurance. Otherwise, such individual shall be required to submit a new application demonstrating satisfaction of such financial and insurance requirements in order to engage in the business of contracting under this chapter as an individual in his or her own name or doing business as an individual in a trade name as a sole proprietor or by the business organization he or she desires to qualify in order to obtain a license for such other business organization, but such person shall be entitled to continue engaging in the business of residential or general contracting in accordance with and under his or her previously issued license unless and until the appropriate division determines that the person seeking issuance of the license no longer meets these requirements.

(3) Upon a favorable determination by the division having jurisdiction, after investigation of the financial responsibility, if applicable, and insurance of the applicant,

the division shall notify the applicant, whether the applicant was previously approved as an individual or a qualifying agent, that the applicant is approved, without an examination, for a new license.

(f) Disciplinary action and other sanctions provided in this chapter may be administered against a business organization operating under a license issued through its licensed qualifying agent or agents in the same manner and on the same grounds as disciplinary actions or sanctions against an individual or license holder acting as its qualifying agent under this chapter. The divisions or the board may deny the license to a qualifying agent for any business organization if the qualifying agent or business organization has been involved in past disciplinary actions or on any grounds for which individual licenses can be denied.

(g) Each qualifying agent shall pay the appropriate division an amount equal to the original fee for a license applied for on behalf of a new business organization. If the qualifying agent for a business organization desires to qualify additional business organizations, the division shall require him or her to present evidence of the financial responsibility, if applicable, and insurance of each such organization.

(h) All qualifying agents for a business organization are jointly and equally responsible for supervision of all operations of the business organization, for all field work at all sites, and for financial matters within the State of Georgia, both for the organization in general and for each specific job for which his or her license was used to obtain the building permit.

(i) Any change in the status of a qualifying agent is prospective only. A qualifying agent shall for purposes of application of this chapter and the enforcement and disciplinary mechanisms thereunder be and remain responsible for his or her actions or omissions as well as those of the business organization for which such person had acted as a qualifying agent occurring during his or her period of service as such qualifying agent as and to the extent set forth in this chapter. A qualifying agent is not responsible for his or her predecessor's actions, but is responsible, even after a change in status, for matters for which he or she was responsible while in a particular status. Further, nothing in this chapter shall be interpreted as a basis for imposition of civil liability against an individual qualifying agent by any owner or other third party claimant beyond the liability that would otherwise exist legally or contractually apart from and independent of the individual's status as a qualifying agent."

**SECTION 7.**

Said chapter is further amended by revising Code Section 43-41-12, relating to penalty for violating provisions, as follows:

"43-41-12.

(a) Any person, whether an individual or a business organization, who:

- (1) Contracts for or bids upon or engages in the construction of any of the projects or works enumerated in the definitions of residential contractor or general contractor in Code Section 43-41-2 without having first complied with the appropriate provisions of this chapter or who shall attempt to practice residential contracting or general contracting in this state except as provided for in this chapter;
- (2) Falsely represents, advertises, or holds himself or herself or an affiliated business organization out as a residential contractor or general contractor licensee duly authorized to perform work under such classification of licensure pursuant to this chapter;
- (3) Represents or attempts to use or presents as his or her own the license of another person or, in the case of a business organization, a person other than its qualifying agent;
- (4) Gives false or forged evidence of any kind to the board or its divisions or to any member of the board in maintaining a license;
- (5) Uses an expired, suspended, or revoked license to continue engaging in residential contracting or general contracting;
- (6) Operates a business organization engaged in contracting after 120 days following the termination of its only qualifying agent without designating another primary qualifying agent, except as provided in Code Section 43-41-9; or
- (7) Intentionally and repeatedly misrepresents or manipulates the value or percentage of work at the time of contract under subsections (e) and (f) of Code Section 43-41-17 to avoid the licensing requirements of this chapter,

shall be guilty of a misdemeanor and shall, upon conviction, be punished for each such offense by a fine of not less than \$500.00 or imprisonment of three months, or both fine and imprisonment in the discretion of the court.

(b) Any architect or engineer who recommends to any project owner the award of a contract to anyone known by such architect or engineer not to be properly licensed under this chapter shall be subject to such penalties as provided in subsection (a) of this Code section and also to any appropriate disciplinary action by the appropriate division.

(c) Except as otherwise provided in this Code section, any person who violates any provision of this chapter shall be guilty of a misdemeanor."

**SECTION 8.**

Said chapter is further amended by revising Code Section 43-41-14, relating to the role of building inspectors and penalty for noncompliance with chapter, as follows:

"43-41-14.

(a) Any person, whether an individual or a business organization acting through a qualifying agent, intending to perform work as a residential or general contractor, upon making application to the building inspector or such other authority of any incorporated municipality or county in this state charged with the duty of issuing building or other permits for contemplated construction work requiring performance by either a licensed residential contractor or a licensed general contractor shall, before being entitled to the issuance of such permit, furnish to such inspector or authority, personally or through his or her authorized agent specifically designated to act on his or her behalf in a sworn written document submitted contemporaneously or previously submitted and maintained by such inspector or authority, his or her residential contractor or general contractor license number and the identity of any business organization for which such applicant is serving as qualifying agent that is undertaking or contracting as a residential contractor or a general contractor to construct or manage the construction. It shall be unlawful for any such building inspector or other authority to issue or allow the issuance of such building permit unless the applicant has furnished his or her residential contractor or general contractor license number and the identity of any such business organization relative to performance of the work for which a permit has been applied. A building inspector or other authority shall issue such building permit under the terms of this Code section to any person, including an individual licensee acting on his or her own behalf or a licensee acting as a qualifying agent for a business organization and such business organization, upon evidence reasonably establishing that such person is duly licensed as a residential or general contractor under this chapter, either individually or as a business organization acting under a duly licensed qualifying agent. Any building inspector or other such authority that issues a building permit to a person known by such building inspector or authority not to be properly licensed under this chapter shall be guilty of a misdemeanor and, upon conviction, shall be subject to a fine of not more than \$500.00.

(b) The licensing requirements imposed by this chapter and the effective dates of such licensing requirements must be posted by any county or municipality in this state charged with the duty of issuing building or other permits for construction work requiring performance by either a licensed residential contractor or a licensed general contractor in the same location in which such building or other permits are issued."

**SECTION 9.**

Said chapter is further amended by revising subsections (a), (b), (e), (f), (i), and (j) of Code Section 43-41-17, relating to effective date of licensing and sanctioning provisions, and adding a new subsection (n) as follows:

"(a) The licensing requirements imposed by this chapter and the sanctions and consequences relating thereto shall not become effective and enforceable until July 1, 2008. On and after such date, no person, whether an individual or a business organization, shall have the right to engage in the business of residential contracting or general contracting without a current, valid residential contractor license or general contractor license, respectively, issued by the division under this chapter or, in the case of a business organization, unless such business organization shall have a qualifying agent as provided in this chapter holding such a current, valid residential contractor or general contractor license on behalf of such organization issued to such qualifying agent as provided in this chapter. Notwithstanding the foregoing, persons seeking licensure under this chapter and exemption from examination under paragraphs (1) and (2) of subsection (a) of Code Section 43-41-8 shall submit their applications, including all necessary proof of the basis of exemption from examination for such license, starting January 1, 2006. The period for submission of such applications and requests for exemption from the examination requirements shall extend thereafter for a period of 18 months. Furthermore, notwithstanding the foregoing, any person seeking licensure under this chapter and exemption from examination under paragraph (3) of subsection (a) of Code Section 43-41-8 may submit his or her application, including all necessary proof of the basis of such exemption starting January 1, 2007, and continuing thereafter.

(b) As a matter of public policy, any contract entered into on or after July 1, 2008, for the performance of work for which a residential contractor or general contractor license is required by this chapter and not otherwise exempted under this chapter and which is between an owner and a contractor who does not have a valid and current license required for such work in accordance with this chapter shall be unenforceable in law or in equity by the unlicensed contractor. For purposes of this subsection, a contractor shall be considered unlicensed only if the contractor was unlicensed on the effective date of the original contract for the work, if stated therein, or, if not stated, the date the last party to the contract executed such contract, if stated therein. If the contract does not establish such a date, the contractor shall be considered unlicensed only if the contractor was unlicensed on the first date upon which the contractor provided labor, services, or materials under the contract. Notwithstanding any other provision of law to the contrary, if a contract is rendered



unenforceable under this subsection, no lien or bond claim shall exist in favor of the unlicensed contractor for any labor, services, or materials provided under the contract or any amendment thereto. This subsection shall not affect the rights of parties other than the unlicensed contractor to enforce contract, lien, or bond remedies. This subsection shall not affect the obligations of a surety that has provided a bond on behalf of an unlicensed contractor. It shall not be a defense to any claim on a bond or indemnity agreement that the principal or indemnitor is unlicensed for purposes of this subsection."

"(e) Nothing in this chapter shall prevent any person holding a valid license issued by the State Construction Industry Licensing Board, or any division thereof, pursuant to Chapter 14 of this title from performing any work defined in the Code sections under which the license held by said person was issued. Furthermore, nothing in this chapter shall preclude a person licensed under Chapter 14 of this title to perform plumbing, conditioned air contracting, utility contracting, electrical contracting, or low-voltage contracting from offering to perform, performing, engaging in, or contracting to engage in the performance of construction work or services directly with an owner, which work would otherwise require a license under this chapter, where the total scope of the work to be performed is predominantly of the type for which such contractor is duly licensed to perform under Chapter 14 of this title such that any other work involved is incidental to and an integral part of the work performed within the scope of such license under said chapter and does not exceed the greater of \$10,000.00 or 25 percent of the total value at the time of contracting of the work to be performed; provided, however, that such contractor may not delegate or assign the responsibility to directly supervise and manage the performance of such other work to a person unless such person is licensed under this chapter and the work being performed by such person is within the scope of that person's license.

(f) Nothing in this chapter shall preclude a specialty contractor from offering or contracting to perform or undertaking or performing for an owner limited, specialty, or specific trade contractor work. However, nothing in this chapter shall permit a specialty contractor to perform work falling within the licensing requirements of Chapter 14 of this title where such specialty contractor is not duly licensed under such chapter to perform such work. The board shall by rule or policy by January 1, 2008 identify specialty contractors or other criteria to determine eligibility under the exemption of this subsection. The specialty contractor otherwise exempted from license requirements under this chapter may perform work for an owner that would otherwise require a license under this chapter where the total scope of the work to be performed is predominately of the type for which such specialty contractor is duly recognized as exempt under this subsection by the board,

provided that such other work involved is incidental to and an integral part of the exempt work performed by the specialty contractor and does not exceed the greater of \$10,000.00 or 25 percent of the total value at the time of contracting of the work to be performed."

"(i) Nothing in this chapter shall preclude an architect licensed pursuant to Chapter 4 of this title or an interior designer registered pursuant to Chapter 4 of this title or an engineer registered pursuant to Chapter 15 of this title from performing work or providing services within the scope of his or her registration for the practice of architecture or interior design or license for practicing engineering.

(j) Nothing in this chapter shall preclude an architect licensed pursuant to Chapter 4 of this title or an interior designer registered pursuant to Chapter 4 of this title or an engineer licensed pursuant to Chapter 15 of this title from offering to perform or offering or rendering design-build services to an owner; provided, however, that such offer or contract shall clearly indicate at the time of such offer or contract that all services of a general contractor incident to the design-build performance shall be performed by a duly licensed general contractor in compliance with other provisions of this chapter and that all services so offered or provided falling within the scope of the licensing requirements of this chapter are offered and rendered by a licensed general contractor in accordance with this chapter."

"(n) Nothing in this chapter shall apply to the construction or installation of manufactured homes as defined in paragraph (4) of Code Section 8-2-131."

#### **SECTION 10.**

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

#### **SECTION 11.**

All laws and parts of laws in conflict with this Act are repealed.